missed and on Zilah we impose a sentence of eight years' imprisonment.

Order accordingly.

Solicitors: *S. Seenivasagam & Sons*; *Yeap & Yeap*; *Raj & Co.*

PUBLIC PROSECUTOR v. ROUTLEY

[R.Cr.J. (Simpson J.) January 16, 1964]

[Jesselton — Criminal Revision No. 1 of 1964]

Criminal Procedure—Plea of guilty by letter—Road Traffic Ordinance (Sabah Cap. 128), s. 16—Criminal Procedure Code (Sabah No. 4 of 1959), s. 169(2).

Road Traffic Ordinance (Sabah Cap. 128), s. 16(1) & (2)—Riding motorcycle under influence of drink—Offence under s. 16(1)—Pleading guilty by post—Whether acceptance of plea by Magistrate correct—Endorsement of licence—Sentence.

A plea of guilty by letter cannot be accepted from an accused charged under section 16(1) of the Road Traffic Ordinance (Sabah Cap. 128) because the maximum punishment permitted under that section is 12 months imprisonment whereas pleas by way of letters can only be accepted in respect of offences which do not carry a maximum punishment beyond 6 months imprisonment.

CRIMINAL REVISION.

Simpson J.: The accused was charged with riding a motorcycle under the influence of drink to such an extent as to be incapable of having proper control, an offence under section 16(1) of the Road Traffic Ordinance (Cap. 128).

He pleaded guilty by letter, was convicted and fined $10. No other order was made.

This is a serious offence and while the penalty is of course in the discretion of the Magistrate there can be no doubt that a fine of $10 is manifestly inadequate whatever the circumstances. Moreover under section 16(2) the Court is bound to order endorsement of the licence and disqualification for not less than 12 months. The period of disqualification may be reduced or the order dispensed with only on proof of special circumstances. Such special circumstances must be directly connected with the commission of the offence, for example the administration of a drug to a driver without his knowledge. A circumstance peculiar to the offender such as financial hardship cannot normally be taken into account. It is the duty of the Magistrate to point out the result of a conviction for this offence and to ask the offender if he wishes to give evidence of special circumstances.

In this case the accused pleaded guilty by letter. Section 169(2) of the Criminal Procedure Code which deals with pleas of guilty by letter however excludes offences punishable by fine and imprisonment for a period exceeding six months. This offence is punishable under section 16(1) with a fine and imprisonment for 12 months.

An opportunity to plead guilty by letter should not therefore have been afforded to the accused and his plea must be disregarded. I therefore quash the proceedings and order a retrial before the same or another Magistrate. There is nothing to prevent the accused claiming trial should he so wish.

Re-trial ordered.

TAN HONG CHIT v. LIM KIN WAN

[F.C. (Barakbah C.J. (Malaya), Azmi & Suffian JJ.) January 30, 1964]

[Kuala Trengganu — Federal Court Civil Appeal No. 7 of 1963]

Land Laws—Malay reservation land held by non-Malay—Land acquired before it become Malay reservation—Transfer or charge to non-Malay—Whether approval of Ruler-in-Council required—Malay Reservation Enactment, 1930, ss. 3, 7 and 13A(iii).

Interpretation—Disabling statute—Construction in favour of freedom of individual.

Under section 13A(iii) of the Malay Reservation Enactment, 1930, when a piece of land in the Malay Reservation area is registered in the name of a non-Malay who had acquired the land prior to the creation of the Malay Reservation the non-Malay can transfer or charge the land to any non-Malay and any subsequent transfer or charge to a non-Malay can be effected without obtaining the approval of the Ruler-in-Council. But once a non-Malay registered owner transfers or charges the land to a "Malay" as defined in section 3(i) of the Enactment then the new Malay registered owner cannot transfer or charge the land to a non-Malay without obtaining the approval of the Ruler-in-Council.

Per Suffian J.: where there is ambiguity as to the meaning of a disabling statute the construction which is in favour of the freedom of the individual should be given effect to.

Decision of Hashim J. ([1963] M.L.J. 100) affirmed.

Case referred to:—

(1) *David* v. *De Silva* [1934] A.C. 106.

FEDERAL COURT.

Wan Mustapha bin Haji Ali for the appellant.

Isahak Hamid for the respondent.

Cur. Adv. Vult.

Suffian J.: Three pieces of lands are involved in this appeal, lots numbers 26, 27 and 29 all in the District of Kota Bahru, Kelantan.

Gan Mek, a Chinese, became the registered proprietor of the first piece on 23rd September 1923 and of the second piece on 26th March 1925 and Choa Bon Sek, also a Chinese, was the registered proprietor of the third piece. Then the Malay Reservation Enactment, 1930, was enacted. By *Gazette* Notification No. 56 dated 9th December, 1930 the administrative district of Kota Bahru, in which these lands are situate, was declared by the Ruler-in-Council under section 4

of that Enactment to be a Malay Reservation. On 25th January, 1934 Gan Eh Mek, who appeared to be the same person as Gan Mek, became the registered proprietor of the third piece also.

On 26th January, 1950 a Chinese Tan Hong Chit, the appellant, became the registered proprietor of all the three pieces "upon sale by order of court."

On 2nd November, 1950 the appellant received $3,400 from the respondent Lim Kim Wan, also a Chinese, and they executed transfers of the lands under the Kelantan Jual Janji Rules, the respondent undertaking to re-transfer the lands back to the appellant on the latter paying him back the $3,400 after the expiration of two years from the date of the transfers but before 24th November, 1952. On the same date (2nd November 1950) the respondent's name without the sanction of the Ruler-in-Council appeared on the register as the proprietor of the lands.

The appellant failed to redeem the lands by the stipulated time.

On 7th April, 1962 the appellant filed notice of motion praying for an order that the transfers in favour of the respondent be set aside as they were (she contended) *ultra vires* the Malay Reservation Enactment, 1930.

It was agreed that these lands have never been registered in the name of a Malay.

Section 13A of the Enactment reads:—

"(i) His Highness the Ruler-in-Council may approve —

(a) the alienation of any State Land included in a Malay Reservation,

(b) the transfer or transmission of the right or interest of any Malay in reservation land, and

(c) the transfer or transmission of any reservation land acquired by virtue of this section, by any person not being a Malay,

to any other person not being a Malay, subject to the imposition of such restriction in interest and such conditions in the document of title and such terms of rent as he may think fit: and the Approved Application, Memorandum of Transfer or Application for Registration, as the case may be, under the Land Enactment may be registered if presented with a certificate signed by the State Secretary in the form Schedule C.

Upon registration such certificate shall be attached to the Approved Application, Memorandum of Transfer or Application for Registration, as the case may be.

(ii) Upon registration of such Approved Application, Memorandum of Transfer or Application for Registration, as the case may be, the land affected thereby shall remain subject to all the provisions of the Malay Reservation Enactment.

(iii) Nothing in this section shall prevent the transfer or transmission of the right or interest in reservation land of any person not being a Malay to any other person not being a Malay always provided that such right or interest shall have been acquired prior to the creation of the Malay Reservation in which the land is included."

Relying on sub-section (iii) of the above section the learned Judge dismissed the motion. He held that when land in a Malay Reservation is registered in the name of non-Malay who acquired it prior to the creation of the Reservation (I shall refer to him below as the first non-Malay proprietor) he can transfer or charge it to any non-Malay and any subsequent transfer or charge to a non-Malay can be effected without the approval of the Ruler-in-Council, but once a non-Malay registered proprietor transfers or charges it to a Malay then the Malay registered proprietor cannot transfer or charge it to a non-Malay save with the approval of the Ruler-in-Council.

The appellant appeals, saying that the learned Judge's interpretation of the sub-section is wrong. Her counsel argues that only the first non-Malay proprietor can dispose of it to a non-Malay without the approval of the Ruler-in-Council, but a subsequent non-Malay proprietor such as the appellant requires such approval. I respectfully agree with the conclusion of the learned Judge though not with his reasons.

The Enactment came into force on 4th November, 1930. Prior to that a registered proprietor, be he Malay or non-Malay, could, subject to the provisions of the Land Enactment restricting disposals by a native of Kelantan to a non-native, dispose of his land to anybody he liked but the Malay Reservation Enactment fetters his powers, disabling him from certain dealings.

The scheme of the legislation is to empower the Ruler-in-Council by notification to declare any area of land to be a Malay Reservation, section 4. The cardinal principle is stated by section 12 which provides that all dealings or disposals whatever and all attempts to deal in or dispose of Reservation land contrary to the provisions of the Enactment shall be null and void and no land officer shall register any dealing which is null and void under the section.

The question here therefore is whether the appellant's dealings in these three lands were contrary to the Enactment. In examining this question it is convenient to deal separately with the three types of land to be found within a Malay Reservation: (a) State land; (b) land of which a Malay is the registered proprietor; and (c) land of which a non-Malay is the registered proprietor.

As regards the first type, namely State land, which of course may be disposed of only by the Ruler-in-Council, section 6 provides:—

"No State land included in a Malay Reservation shall be sold, leased or otherwise disposed of (otherwise than by Temporary Occupation Licence for a period not exceeding one year) to any person not being a Malay, save as provided in this Enactment."

This clearly imposes a general prohibition on the disposal by the Ruler-in-Council of State land within a reservation to non-Malays, except as

permitted by the Enactment. It so permits by section 13A(i)(a) whereunder the Ruler-in-Council may approve the alienation of such land to non-Malays subject to such restrictions and conditions as he may think fit to impose. It will be seen that such a non-Malay proprietor acquires the land subsequent to the declaration under section 4.

As regards the second type, that is reservation land of which a Malay is registered proprietor, a general prohibition against its disposal to non-Malays is imposed by section 7(i) the relevant part of which reads:—

"No right or interest of any Malay in reservation land....shall be transferred to or transmitted to or vest in any person not being a Malay [provided that leases of limited duration shall be valid], save as provided in this Enactment."

Having stated the general prohibition, the Enactment then proceeds by sections 8, 9, 9A and 10 to deal with various matters to make effective the object of preventing Malays from losing their land to non-Malays. Section 13A(i) however empowers by paragraph (b) the Ruler-in-Council to approve the transfer or transmission of the right or interest of a Malay in reservation land to non-Malays subject to such restrictions and conditions as he may think fit to impose.

As regards the third type of reservation land, that is land of which a non-Malay is the registered proprietor, the Enactment contains only four provisions relating to its disposal. First, section 7(i) the relevant part of which reads:—

"....no right or interest in [reservation] land acquired by virtue of section 13A by any person not being a Malay shall be transferred to or transmitted or vest in any person not being a Malay [provided that leases of limited duration shall be valid], save as provided in this Enactment."

This provision is irrelevant as the appellant did not acquire her right or interest under section 13A.

Secondly, sub-section (vi) of the same section which reads:—

"Notwithstanding anything to the contrary in any law contained it shall be lawful for a Land Registrar to register

(a) a transmission of any right or interest in reservation land by a non-Malay to his natural heirs, or to his surviving spouse, parents, brothers or sisters, or in the case of minors to their Guardian or Trustee, or to a duly appointed Administrator, as the case may be, and

(b) a transfer by such Guardian, Trustee or Administrator to the persons legally entitled to such right or interest in reservation land under such transmission."

This provision, which is permissive rather than prohibitive, is also irrelevant for obvious reasons.

Thirdly, paragraph (c) of sub-section (i) of section 13A, already reproduced above. This again is irrelevant because the appellant did not acquire her right or interest under section 13A.

Fourthly, sub-section (iii) of section 13A, already reproduced above. Counsel for the appellant argued in the lower court and argues here that in view of the word "such" in that subsection only a non-Malay proprietor whose name came on the register prior to the creation of the Malay Reservation in which the land is situate may dispose of it to non-Malays without the sanction of the Ruler-in-Council but a non-Malay proprietor whose name came on the register subsequently to that creation may not do so. I regret I am unable to agree with this view. I am of the opinion that the language of this provision is only permissive, it permits a certain kind of disposal; but it cannot be construed as prohibiting by necessary implication disposal of the other kind. If the legislature had intended to fetter the freedom of the non-Malay proprietor in the way suggested by the appellant, one would have expected it to use the clearest terms and that has not been done here. It has been held by the Privy Council in *David* v. *De Silva*,[1] that where there is ambiguity as to the meaning of a disabling statute the construction which is in favour of the freedom of the individual should be given effect to.

I can find nothing in the Enactment which says that the appellant's dealings require for their validity the approval of the Ruler-in-Council.

In considering this matter it is important to bear in mind that there are two kinds of non-Malay rights and interests in reservation land:

(i) rights and interests acquired under section 13A;

(ii) rights and interests acquired otherwise.

If the lands here had been State lands within a reservation and they had been alienated by the Ruler-in-Council to the appellant or first to a non-Malay and subsequently transferred or transmitted to the appellant, she would have acquired them under section 13A; likewise if she had them transferred or transmitted to her by a previous Malay proprietor with the approval of the Ruler-in-Council. Had that been the case, these disposals by her to the respondent would have been caught by the prohibition in section 7(i). But that was not the case.

These disposals not being contrary to the provisions of the Enactment, this appeal is accordingly dismissed, with costs.

Barakbah C.J. (Malaya): I have had the advantage of reading the judgment of Suffian J. I agree with his reasoning and finding and have only a few words to add.

Section 7(i) of the Kelantan Malay Reservation Land Enactment 1930 states:

"No right or interest of any Malay in reservation land and no right or interest in such land acquired by virtue of section 13A by any person not being a Malay shall be transferred to or transmitted to or vest in any

person not being a Malay provided that leases of reservation land shall be valid to the extent specified in subsections (ii) to (v) below, save as provided in this Enactment."

And section 13A provides:—

"His Highness the Ruler in Council may approve

(a) .. .. ..

(b) .. .. ..

(c) the transfer or transmission of any reservation land acquired by virtue of this section, by any person not being a Malay, to any other person not being a Malay, subject to the imposition of such restriction in interest and such conditions in the document of title and such terms of rent as he may think fit: and the Approved Application, Memorandum of Transfer or Application for Registration, as the case may be, under the Land Enactment may be registered if presented with a certificate signed by the State Secretary in the form of Schedule C.

Section 7(i) may be divided into two parts.

(1) No right or interest of any Malay in reservation land.

(2) No right or interest in such land acquired by virtue of section 13A by any person not being a Malay.

The land in this case was owned by a non-Malay and no right or interest was acquired by him by virtue of section 13A. Therefore, section 7(i) does not apply. Accordingly the appeal should be dismissed with costs.

Azmi J.: I have had the opportunity of reading the judgment of Suffian J. in this appeal and I agree with him that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Wan Mustapha & Co.; Isahak Hamid & Co.*

LING NGUONG HOCK v. TING TING UNG

[O.C.J. (McGilligan J.) February 11, 1964]

[Sibu — High Court Civil Appeal No. 16 of 1963]

Contract—Agreement for sale of a motor-lorry—Payment of deposit by purchaser—Sale to be completed in 15 days—Motor-lorry handed to purchaser—Sale not completed—Motor-lorry recovered by seller—Whether seller entitled to retain deposit or liable to refund it.

The appellant contracted with the respondent to sell to the respondent his motor-lorry. The respondent paid $300 as deposit. It was agreed between the parties that the sale would be completed in 15 days and this was reduced into writing. The sale was not however completed and the appellant recovered from the respondent the motor-lorry which the respondent had been using as from the date of the contract. The respondent then brought an action to recover the $300 paid as deposit by him to the appellant. The magistrate in the Court of Small Causes found for the respondent. On appeal

Held: there was evidence to show that it was the respondent who defaulted on the contract by failing to produce on due date and even thereafter the balance of purchase money required to complete the sale. As a deposit is primarily a security that the purchaser will complete and as in this case it was the purchaser who had defaulted, the seller was entitled to keep the deposit.

Howe v. *Smith* (1) and *Stockloser* v. *Johnson* (2) followed

Cases referred to:—

(1) *Howe* v. *Smith* (1887) 27 Ch. D. 89.

(2) *Stockloser* v. *Johnson* [1954] 1 Q.B. 476.

CIVIL APPEAL.

Parties in person.

McGilligan J.: This is an appeal from the Court of Small Causes, Sibu. In that Court the respondent was plaintiff and the appellant was defendant.

It is common ground between the parties that they entered into an agreement for the purchase by the respondent and the sale by the appellant of a motor lorry (or of a share in a motor lorry, it is not clear which). One must presume the appellant had some right to sell, though the lorry appears to be in the name of another man. Part of the terms of the agreement were reduced to writing, and a written agreement called "agreement of security money" was executed by both parties. It reads as follows:—

"Lorry No. S. 662 owned by Ling Sing Teck who now wishes to sell half share of the lorry to Ting Ting Ung and received $300.00 (Dollars Three Hundred only) as surety money for the purchase of the said lorry. Half a month later a proper agreement shall be made. Later on if the seller does not want to sell the seller shall indemnify Dollars Three Hundred only ($300.00). If the purchaser does not want to buy, the surety money shall be forfeited. There will be no grumble."

It is not clear from the (as usual inadequate) evidence in the lower Court what sum was agreed on as the purchase price. The respondent said the price was $3,000.00. The appellant said he intended to sell the lorry at half the original price of $3,000.00. The written agreement speaks of the sale of a half share in the lorry. It is all rather confused and confusing, but as it happens the exact purchase price (it must have been at least $1,500.00) is immaterial in the circumstances and on the view I take of this case, and it is certain that (a) the respondent paid a deposit of $300.00 at the time of the execution of the written agreement, and (b) in the words of the written agreement "half a month later a proper agreement shall be made". These latter words meant, it may be taken, that the lorry (or a share in it) was to be formally transferred to the respondent by the execution of the proper document 15 days after the signing of the written agreement. That is plain from the evidence of the plaintiff's witness Lo Teck Ming, who said

"It was also promised that the proceeding in proper transfer of the said lorry would be done before June 15, 1963."

and the evidence of the appellant, who said

"On June 31, 1963 we had made an agreement ourselves that I first got an advance from plaintiff of the sum of $300.00 and agreed to make a proper transfer after 15 days."